

NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.



Congressional Information Service, Inc.
Washington, D.C.

AMENDING THE STANDING RULES OF THE SENATE FOR
THE USE OF THE RECORDING STUDIO AND MASS MAIL-
INGS WITH RESPECT TO UNCONTESTED ELECTIONS

JUNE 27 (legislative day, JUNE 11), 1990.—Ordered to be printed

Mr. FORD, from the Committee on Rules and Administration,
submitted the following

REPORT

[To accompany S. Res. 306]

The Committee on Rules and Administration, having considered an original resolution to amend the Standing Rules of the Senate for the use of the recording studio and mass mailings with respect to uncontested elections, reports favorably thereon without amendment and recommends that the resolution be agreed to.

BACKGROUND AND PURPOSE

In 1977 the Senate adopted as part of the Senate Code of Official Conduct amendments to rule 40 of the Standing Rules of the Senate that established a 60 day pre-election moratorium on the use of the frank for mass mailings¹ and on the use of the recording studio by any Member who is a candidate for public office. The relevant paragraphs of rule 40 are:

1. A Senator or an individual who is a candidate for nomination for election, or election, to the Senate may not use the frank for any mass mailing (as defined in section 3210(a)(6)(E) of title 39, United States Code) if such mass mailing is mailed at or delivered to any postal facility less than sixty days immediately before the date of any primary or general election (whether regular, special, or

¹ In 1981 Congress amended 39 U.S.C. 3210 to increase the statutory moratorium period regarding use of the frank for mass mailings from 28 to 60 days, thus conforming the statutory moratorium period to that of Rule 40.

runoff) in which the Senator is a candidate for public office or the individual is a candidate for Senator.

* * * * *

6. (a) The radio and television studios provided by the Senate or by the House of Representatives may not be used by a Senator or an individual who is a candidate for nomination for election, or election, to the Senate less than sixty days immediately before the date of any primary or general election (whether regular, special, or runoff) in which that Senator is a candidate for public office or that individual is a candidate for Senator.

(b) This paragraph shall not apply if the facilities are to be used at the request of, and at the expense of, a licensed broadcast organization or an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954.

The jurisdiction of this Committee includes the provision of services to the Senate and the approval of payments from the contingent fund of the Senate. It has the responsibility, therefore, for assuring compliance with the sixty day preelection restrictions in the rules, pertaining to the use of the frank for mass mailings and use of the recording studio.

The sixty day restriction in both paragraphs of rule 40 is identical and makes no reference to whether the Member's election is contested. When the Code of Official Conduct was adopted in 1977, a synopsis of the Code's provisions (April 1, 1977 RECORD, page 5396) also made no reference to whether the Member's election is contested. The synopsis described the rule 40² moratorium as prohibiting "Senators and candidates from using mass mailings 60 days before the date of any election in which the individual is involved," and further provided that "Senate and House radio and television studios may not be used by Senators or candidates less than 60 days prior to any election."

At the time rule 40 was amended to add these restrictions, there were already in place two statutory provisions pertaining to a sixty-day moratorium which explicitly exempted uncontested elections. Those statutes, 2 U.S.C. 58(e) (official travel) and 2 U.S.C. 59(e)(4) (mobile office) provide that reimbursement of official travel and mobile office expenses of such a Member was prohibited during that period "unless his candidacy in such election is uncontested".

The two statutory provisions specifically exempt any Member whose election is uncontested, while the moratoria provisions in the Standing Rules do not. In the absence of any clear legislative history that the Senate intended all four moratoria to be interpreted the same, despite their clearly expressed distinctions, this Committee has interpreted each restriction literally. Therefore, it has advised Members who were involved in an election without opposition that the travel and mobile office restriction did not apply, but that the rules pertaining to use of the frank for mass mailings

² At that time, current Rule 40 was numbered as Rule 48.

and use of the recording studio did prohibit their use during the sixty day period before an election, whether contested or not.

It has recently come to the attention of the Committee that during the sixty day pre-election moratorium the Senate Service Department has been providing services in connection with mass mailings under the frank, and the Recording Studio has been making its services available to Members who are involved in elections without opposition. The provision of such services by these offices has not been authorized by this Committee. Such services have been provided pursuant to advice from the Select Committee on Ethics which has authority to interpret the Code of Conduct.

Portions of relevant rulings of the Select Committee on Ethics are:

Interpretative Ruling 152 (6/22/78): Is a Member a "candidate", for purposes of the franking and studio restrictions of rule 40, if his or her name is on the primary ballot, but he or she will have no primary opposition and no write-in votes are allowed * * *. The restrictions of rule 40 are intended to reduce the advantage of incumbent Senators over challengers. Under the circumstances described, there can be no possible challengers in the primary election. The Committee therefore believes that the restrictions of rule 40 are not applicable.

Interpretative Ruling 154 (6/22/78): The prohibition imposed by rule 40 on the use of the frank in mass mailings and on the use of the Senate Recording Studio were intended to restrict the advantages which incumbent Senators might have during a reelection campaign. The Committee previously ruled (#137, #152) that Senators who do not have a primary election or whose names appear on a primary ballot unopposed, and where no write-in candidates are authorized, are not "candidates" for the purposes of rule 40. However, when a Senator's name is listed on a primary ballot and state law specifically authorizes write-in candidates, there is a possibility for a contested primary election. As such, the Senator would be considered a "candidate".

During its meeting June 13, 1990, the Committee considered the conflicting interpretations of these pre-election restrictions by this Committee and by the Select Committee on Ethics. The Committee decided to submit to the Senate this original resolution to amend the rule 40 moratorium provisions to conform them with the interpretation of the Ethics Committee and with the statutory provisions restricting reimbursements of travel and mobile office expenses incurred within 60 days of an election.

The Committee wishes to be clear that this resolution is not intended to overrule section 3 of the Regulations Governing Mass Mail, approved by the Committee on Rules and Administration May 1, 1984, which provides that no Member may "send a mass mailing, except town meeting notices and opinion surveys, during the period beginning 60 days before any biennial Federal general election". This regulation was adopted to preclude any Senator from assisting his/her own campaign, or the campaign of any other

candidate, with mass mailings during the 60 days prior to the general election.

In its interpretation of the statutory moratorium provisions, this Committee has established guidelines for determining when a Member's election will be considered to be "uncontested". These would apply with regard to the rule 40 restrictions, should the Senate adopt this resolution, and are set forth below.

Uncontested candidacies—The restrictions do not apply when the Senator's candidacy is uncontested. An uncontested candidacy is established when the Rules Committee receives written certification from the appropriate state official that the Senator's candidacy is uncontested under state law. A Senator who is running for re-election from a state which permits write-in votes on election day without prior registration by the candidate is subject to the restrictions, provided, however, that with regard to the restrictions on reimbursement of travel and mobile office expenses, if appropriate information is submitted after the election which establishes that there was, in fact, no election contest for the office, vouchers for reimbursements of previously prohibited items will be in order for payment.

PROVISIONS OF THE RESOLUTION

Resolved, That (a) paragraph 1 of rule XL of the Standing Rules of the Senate is amended by striking the period at the end and inserting " , unless the candidacy of the Senator in such election is uncontested."

(b) Paragraph 6(a) of rule XL of the Standing Rules of the Senate is amended by striking the period at the end and inserting " , unless the candidacy of the Senator in such election is uncontested."

COMMITTEE ACTION

On June 13, 1990, the Committee on Rules and Administration held a markup session on the accompanying original resolution to amend the Standing Rules of the Senate for the use of the recording studio and mass mailings with respect to uncontested elections. After discussion, the resolution was passed by a record vote and was ordered reported favorably by the Committee.

COMMITTEE ROLLCALL VOTE

In compliance with paragraph 7(b) and (c) of rule XXVI of the Standing Rules of the Senate, the record of the rollcall vote in the Committee on Rules and Administration during its consideration of this measure was:

YEAS—9

NAYS—0

Mr. Pell
Mr. DeConcini
Mr. Moynihan
Mr. Stevens
Mr. Hatfield
Mr. Dole
Mr. Garn
Mr. McConnell
Mr. Ford

The Chairman presented the proxies of Mr. Inouye and Mr. Dodd in favor of the measure and of Mr. Byrd in opposition to the resolution, and announced that Mr. Gore wished to be recorded as not voting on the resolution.

○